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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,058	08/06/2001	David S. Becker	MCRO284--2/LWT	1840

7590 09/25/2003

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14  
EXAMINER

GOUDREAU, GEORGE A

ART UNIT

PAPER NUMBER

1763

DATE MAILED: 09/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09-923058

Applicant(s)

Becker et al.

Examiner

George Goudreau

Group Art Unit

(763)

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 (MONTHS) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on (2-03 to 6-03) (i.e., - papers #9-13)
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 30-123 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 30-123 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 30-52, 60-81, 86-105, 107-108, and 115-123 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 of U.S. Patent No. 6,287,978. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following.

This patent claims essentially the same subject matter as that which is claimed in the currently pending application.

3. Claims 30-52, 60-81, 86-105, 107-108, and 115-123 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,015,760. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following.

This patent claims essentially the same subject matter as that which is claimed in the currently pending application.

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4. Claims 30-123 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No. 5,880,036. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following.

This patent claims essentially the same subject matter as that which is claimed in the currently pending application.

5. Claims 30-52, 60-81, 86-105, 107-108, and 115-123 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of U.S. Patent No. 5,286,344. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following.

This patent claims essentially the same subject matter as that which is claimed in the currently pending application.

6. Applicant's arguments filed 6-10-03' have been fully considered but they are not persuasive.

Applicant argues the following points regarding the examiner's rejection of their claimed subject matter.

-Applicant has overcome all of the previous ODP rejections of their claimed subject matter through the submission of a terminal disclaimer.

The examiner must disagree.

-Applicant's terminal disclaimer is improper since it is not signed. The examiner must therefore maintain all of the previous ODP rejections of applicant's claims.

7. This action will not be made final.

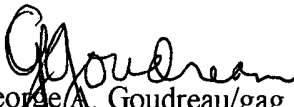
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8. The examiner has initialed all IDS statements of record in which applicant has supplied the appropriate prior art references for review by the examiner. In those instances in which the appropriate prior art was not supplied by the applicant, a line was drawn through the references listed on the IDS to signify the fact that the references were unavailable for the examiner to review.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner George A. Goudreau whose telephone number is (703) -308-1915. The examiner can normally be reached on Monday through Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Examiner Gregory Mills, can be reached on (703) -308-1633. The appropriate fax phone number for the organization where this application or proceeding is assigned is (703) -306-3186.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) -308-0661.

  
George A. Goudreau/gag  
Primary Examiner/AU 1763